

MOTION FILED
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(5)
No. 90-1102

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1990

Robert E. Gibson,
Petitioner,

v.

The Florida Bar, et al.,
Respondents.

_____ /

Brief of Amicus Curiae
In Support of
Petition For Writ of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

Joseph W. Little
Joseph W. Little
Amicus Curiae
Admitted January 9, 1979
3731 N.W. 13th Place
Gainesville, Fl. 32605
(904) 392-2211
1/20/91

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No. 90-1102

IN THE
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January Term, 1991


ROBERT E. GIBSON,
Petitioner.

v.

THE FLORIDA BAR, et al.,
Respondents.

Consent to File
Amicus Curiae Brief

Consent is hereby given to the filing of an
amicus curiae brief in support of the petition
for certiorari by Joseph W. Little.

by , date 2/2/91
for Robert E. Gibson,
Petitioner

by _____, date _____
for The Florida Bar, et al.,
Respondents.

MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF

Pursuant to Rule 37.2, Amicus Curiae moves for leave to file this brief, and states:

1. Petitioner Gibson has consented and the written consent is included with the brief.
2. Respondent The Florida Bar has declined to consent and has authorized Amicus Curiae to represent to the Court that the reason is that Respondent has already filed its response brief. Amicus Curiae does not object to the Court's granting leave to Respondent to file a supplemental response to this brief.

Respectfully submitted,

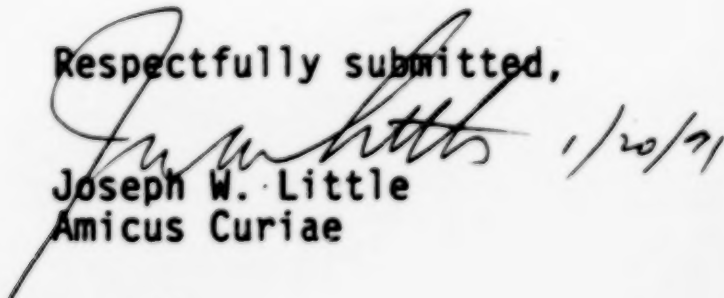
 1/20/71
Joseph W. Little
Amicus Curiae

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INTEREST OF AMICUS CURIAE

This brief of Amicus Curiae is submitted pursuant to Rule 37 in the format denoted by Rule 37.6. It is accompanied by written consent to the filing of the brief provided by Petitioner, and, because Respondents have not consented, by a motion for leave to file.

Amicus Curiae is a member of the Florida Bar and is governed by the rules of the Supreme Court of Florida that are challenged by the petition. Amicus Curiae firmly believes that the individual constitutional rights of no American can be safeguarded if officials exercising the power of the state are permitted to limit, as a condition of their being permitted to earn a livelihood in the practice of law, the first amendment rights of persons who choose to be lawyers. Toward this

end, Amicus Curiae was an amicus participant in proceedings below in the Eleventh Circuit Court of Appeals, was an amicus participant in this Court's consideration of Keller v. State Bar of California, 110 S.Ct. 2228 (1990), is a petitioner in a related case in the Florida Supreme Court (The Florida Bar, In re: David P. Frankel, Case No. 76,853) and a respondent in another related case in the Florida Supreme Court (The Florida Bar Re Petition to Amend The Florida Bar - Bylaws 2-3.10 and 2-9.3, Case No. __-____.)

SUMMARY OF ARGUMENT

Amicus Curiae agrees that the decision below is in error in approving a procedure that violates first amendment rights of Petitioner and Amicus Curiae in that the approved procedure fails to satisfy the minimum requirements of Abood v. Detroit Board of Education, 431 U.S. 209 (1977) and Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986) in four respects:

1. It does not permit dissenters to deduct in advance that portion of the dues that fund the BAR's ideological legislative lobbying activities, but instead employs a constitutionally defective rebate system.

2. It does not permit dissenters to object generally to all the BAR's ideologically lobbying activities, but instead

unconstitutionally requires dissenting members to identify in writing each specific position they dissent to.

3. It does not require the BAR to make a detailed identification of the expenditures it can compel all members to support financially, but instead unconstitutionally requires dissenting members to identify specific positions they object to.

4. It does not provide a reasonably prompt and impartial process to decide the validity of objections of dissenters, but instead imposes an unconstitutional costly and cumbersome process.

In addition, Amicus Curiae asserts that the actual practices of The Florida Bar do in fact continue to violate the First Amendment rights of Petitioner and Amicus Curiae as those rights were acknowledged by this Court in last

term's decision in Keller v. State Bar of California, 110 S.Ct. 2228 (1990). In short, Amicus asserts that the current practices of the Bar constitute compelled funding, without proper relief, of activities that are not "'germane' to the purpose for which compelled association was justified [i.e.] the State's interest in regulating the legal profession and improving the quality of legal services." 110 S.Ct. at 2236. Specific examples are given in the argument.

ARGUMENT

First, Amicus Curiae supports the petition for writ of certiorari on the grounds stated by Petitioner Gibson.

Specifically, Amicus Curiae asserts that the decision below does not prevent infringement of first amendment rights of members of The Florida Bar who are required to provide financial support for ideological political lobbying activities of The Bar to which they dissent. Specifically, the decision below approves a rule that is unconstitutional in several respects. It does not require The Bar to provide "an advance deduction for the proportion of dues that The Bar knows will be used for political activity," Gibson v. The Florida Bar, 906 F.2d 624, 631, 632 (11th Cir. 1990). It forces a Bar member to make his

objections to the political activities of The Bar on an issue by issue basis. Id., at 132. And, it imposes a burdensome arbitration process upon a dissenting Bar member as the means for seeking restitution of improperly imposed mandatory dues. Id. In short, the rules approved by the decision below fail to satisfy the minimum requirements of Abood and Hudson in four respects.

1. It does not permit dissenters to deduct in advance that portion of the dues that fund the BAR's ideological legislative lobbying activities, but instead employs a constitutionally defective rebate system.

2. It does not permit dissenters to object generally to all the BAR's ideologically lobbying activities, but instead unconstitutionally requires dissenting members to identify in writing each specific position

they dissent to.

3. It does not require the BAR to make a detailed identification of the expenditures it can compel all members to support financially, but instead unconstitutionally requires dissenting members to identify specific positions they object to.

4. It does not provide a reasonably prompt and impartial process to decide the validity of objections of dissenters, but instead imposes an unconstitutional costly and cumbersome process.

Second, Amicus Curiae supports the petition on the additional grounds that the current practices of The Bar continue to violate the First Amendment rights of the Petitioner and Amicus Curiae as acknowledged by this Court in Keller. In dealing with the question of how far an integrated Bar may go in compelling

lawyers to become members of and provide financial support to an integrated bar, this Court stated:

Abood held that a union could not expend a dissenting individual's dues for ideological activities not "germane" to the purpose for which compelled association was justified: collective bargaining. Here the compelled association and integrated bar is justified by the State's interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity. The difficult question, of course, is to define the latter class of activities.

Precisely where the line falls between those State Bar activities in which the officials and members of the

Bar are acting essentially as professional advisors to those ultimately charged with the regulation of the legal profession, on the one hand, and those activities having political or ideological coloration which are not reasonably related to the advancement of such goals, on the other, will not always be easy to discern. But the extreme ends of the spectrum are clear: Compulsory dues may not be expended to endorse or advance a gun control or nuclear weapons freeze initiative; at the other end of the spectrum petitioners have no valid constitutional objection to their compulsory dues being spent for activities connected with disciplining members of the bar or proposing ethical codes for the profession.

110 S.Ct. at 2236, 2237, (e.s.).

Although this Court in Keller did not make a definite statement as to their propriety, the Court nevertheless suggested that the following California Bar activities disputed

by the Keller complainants were beyond the pale imposed by Keller on Bar lobbying activities:

...lobbying for or against state legislation (1) prohibiting state and local agency employers from requiring employees to take polygraph tests; (2) prohibiting possession of armor-piercing handgun ammunition; (3) creating an unlimited right of action to sue anybody causing air pollution; and (4) requesting Congress to refrain from enacting a guest worker program or from permitting the transportation of workers from other countries. [Also, disputed were actions of the Bar funded and sponsored Conference of Delegates that] endorsed a gun control initiative, disapproved statements of a United States senatorial candidate regarding court review of a victim's bill of rights, endorsed a nuclear weapons freeze initiative, and opposed federal legislation limiting federal court jurisdiction over abortions, public school prayer and busing.

Despite these limits imposed and implied by Keller, The Florida Bar continues, without providing the provisions to protect dissenters prescribed by Abood, Hudson and Keller, to engage in a very broad spectrum of lobbying activities that far transcend the core functions of the integrated bar in Florida. Specifically, inter alia, the Bar has announced its intention to lobby the Florida legislature for or against the following positions:

- (a) Expansion of the women, infant and children (WIC) program.
- (b) Extension of Medicaid coverage for pregnant women.
- (c) Full immunization of children.
- (d) Establishing children's services councils.
- (e) Family life and sex education/teen

pregnancy prevention.

- (f) Increasing Aid to Families with Dependent Children.
- (g) Enhanced child-care funding and standards.
- (h) Creation of children's needs consensus estimating conference.

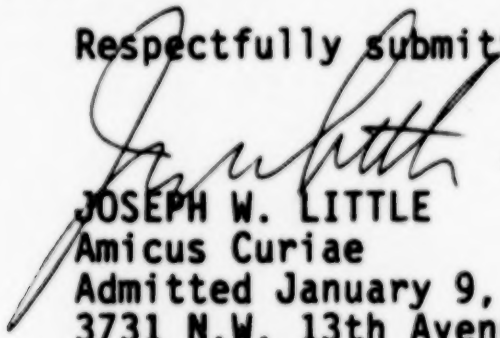
The Florida Bar News, Oct. 15, 1990, at 4, col. 2. Furthermore, in response to complaints raised by dissenting members of the Bar, The Florida Bar has advanced the proposition that it may, consistent with the holdings of Keller, Abood, and Hudson, take the foregoing positions even though the relief mechanisms available to dissenters are only those complained about by Petitioner Gibson in these proceedings. In short, Respondent, The Florida Bar, knowingly and willfully continues to engage in lobbying activities that violate

the First Amendment rights of dissenters and evidences the intention to continue to do so unless and until this Court issues an order that applies specifically to it.

CONCLUSION

In sum, for these additional reasons, Amicus Curiae respectfully urges this Court to grant the petition and the relief sought.

Respectfully submitted,

 1/20/91
JOSEPH W. LITTLE

Amicus Curiae

Admitted January 9, 1979

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CERTIFICATE OF SERVICE

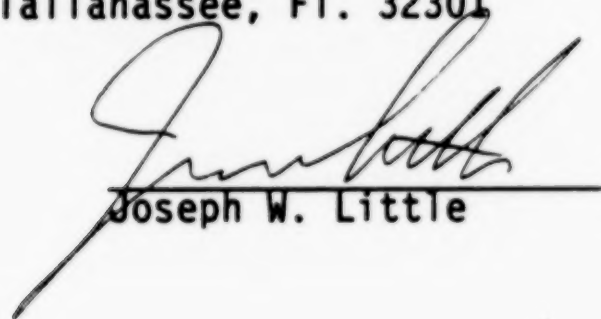
I certify that copies of this brief were
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